

### **REMARKS/ARGUMENTS**

The rejections presented in the Office Action dated December 19, 2008, (hereinafter Office Action) have been considered but are believed to be improper. Reconsideration of the pending claims and allowance of the application in view of the present response is respectfully requested.

Applicant appreciates the indication of allowability for Claims 5-8, 13-16, and 21-24.

With respect to the § 112, first paragraph, rejection of Claims 26-28, Applicant respectfully traverses. First, it is noted that the subject matter of a claim need not be described literally in the Specification (*i.e.*, using the same terms or *in haec verba*), and an applicant is not limited to the nomenclature used in the application as filed. MPEP §§ 608.01(o) and 2163.01. Second, contrary to the assertions at page two, the original Specification describes a server and mobile terminal communicating on an application level. For example, paragraph [0034] (using the numbering of the published application) discloses that the server and mobile terminal may use RTSP, which is an application-level protocol, and paragraph [0061] further describes use of the RTSP PAUSE command. Since communication and suspension of a connection by using application level communication is explicitly disclosed in the original Specification, the rejection is improper. Applicant accordingly requests that the rejection be withdrawn.

With respect to the objection to Claims 1, 9, and apparently 25, Applicant respectfully traverses. The proposed change to the claim language would improperly change the scope of the claims and is incorrect. Adding “request message” as suggested would change the claims to mean that the mobile terminal is merely accepting the message. The current limitations directed to acceptance of the communication connection on the basis of the first mode change command are explained in the original Specification, for example, at step 412 of Fig. 4, step 502 of Fig. 5, and in Fig. 7. Since there is no basis for requiring the proposed change, Applicant traverses and requests that the objection be removed.

Applicant respectfully traverses each of the § 103(a) rejections based upon the teachings of U.S. Patent No. 7,031,746 to Na *et al.* (hereinafter “Na”) because Na alone, or modified as asserted, does not teach or suggest each of the claimed limitations. The Office Action acknowledges at page four that Na fails to teach requesting for suspension of a data streaming communication from a server on the basis of a first mode change command, as claimed in each of the independent claims. Instead, Na teaches that when a voice call request is detected, reception of the multimedia broadcast is continued, but the decoding of the audio signal of the received multimedia broadcast is discontinued for the duration of the voice call (Figs. 2, 3, 4, 5, blocks 221, 315, 431, 519). While the receiving device discontinues decoding the audio signal of the received broadcast, the broadcast signal is still received and the video portion is viewed during the voice call (*e.g.*, Col. 1, line 59 – Col. 2, line 10 and Col. 8, lines 54-63). Thus, in direct contrast to the claimed invention, Na continues to receive and process the digital multimedia broadcast despite a voice call being accepted/initiated (asserted as corresponding to the claimed first mode change command generated by the user).

To overcome this deficiency in the teachings of Na, the Office Action appears to suggest using a server to provide Na’s multimedia broadcast. However, such a modification of Na fails to provide correspondence to each of the claimed limitations. Na is silent with respect to requesting suspension of the multimedia broadcast such that regardless of the device providing the broadcast, Na’s receiving device will continue reception and processing of the broadcast during a voice call. Adding a server to the system of Na fails to overcome Na’s failure to teach or suggest suspension of a data streaming communication. Without correspondence to each of the claimed limitations, the § 103(a) rejections are improper. Applicant accordingly requests that the rejections be withdrawn.

Moreover, Applicant traverses each of the § 103(a) rejections because the asserted modification of Na would improperly undermine the teachings of Na. If a proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984); MPEP

§ 2143.01(V). As explained above, Na is directed to a device that receives a multimedia broadcast during the existence of a voice call to allow a user to continue to view the broadcast video/text while taking the voice call. Modifying the device of Na to instead suspend the multimedia broadcast would directly undermine the objective of allowing Na's user to view the broadcast while taking/making a voice call. Since the asserted modification undermines the objective of Na, such a modification cannot support the § 103(a) rejections. Applicant accordingly requests that each of the § 103(a) rejections be withdrawn.

Dependent Claims 2-4, 10-12, and 18-20 depend from independent Claims 1, 9, and 17, respectively. Each of these dependent claims also stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the above-discussed modification of Na. While Applicant does not acquiesce to any particular rejections to these dependent claims, including any assertions concerning descriptive material, obvious design choice and/or what may be otherwise well-known in the art, these rejections are moot in view of the remarks made in connection with the independent claims above. These dependent claims include all of the limitations of their respective base claims and any intervening claims and recite additional features which further distinguish these claims from the cited references. "If an independent claim is nonobvious under 35 U.S.C. §103, then any claim depending therefrom is nonobvious." MPEP § 2143.03; *citing In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). Therefore, dependent Claims 2-4, 10-12, and 18-20 are also patentable over the asserted modification of Na.

With particular respect to the rejection of dependent Claim 19, the references to Xiang and Walker are improper as they are inconsistent with the statement of rejection at page five. Applicant is of the understanding that these references were inadvertant and the rejection is instead based upon the teachings of Na. If this understanding is incorrect, Applicant requests clarification and an opportunity to respond.

Authorization is given to charge Deposit Account No. 50-3581 (KOLS.101PA) any necessary fees for this filing. If the Examiner believes it necessary or helpful, the

undersigned attorney of record invites the Examiner to contact the undersigned attorney to discuss any issues related to this case.

Respectfully submitted,

HOLLINGSWORTH & FUNK, LLC  
8009 34<sup>th</sup> Avenue South, Suite 125  
Minneapolis, MN 55425  
952.854.2700

Date: March 19, 2009

By: /Erin M. Nichols/

Erin M. Nichols  
Reg. No. 57,125